

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROBERT OGETO ABUGA,

3:15-CV-00948-AC

Plaintiff,

ORDER

v.

GRACE WANJA NJERU,

Defendant.

BROWN, Judge.

Magistrate Judge John V. Acosta issued Findings and Recommendation (#6) on June 9, 2015, in which he recommended the Court dismiss Plaintiff's claims with prejudice for lack of subject-matter jurisdiction. On June 22, 2015, the Plaintiff's copy of the Findings and Recommendation was returned to the court for lack of a current address.

On July 8, 2015, this Court entered an Order in which it directed Plaintiff to file a notice of change of address no later than August 8, 2015, or to show cause in writing why this matter should not be dismissed for failure to prosecute. The Court

advised Plaintiff that failure to file a change of address or to show cause would result in dismissal of this proceeding for lack of prosecution.

On August 4, 2015, Plaintiff filed a Response to the Order to Show Cause in which he failed to identify a new or different mailing address. Plaintiff stated he does not have a permanent residence and is "moving from one place to another."

On August 6, 2015, the Court entered an Order noting Plaintiff's Response and concluding "the fact that Plaintiff received the Court's Show Cause Order and timely responded with his filing indicates he still receives mail addressed to the S.E. Woodward Street address or otherwise is aware of the Court's Orders." Accordingly, the Court ordered Plaintiff's Objections to the Findings and Recommendation due August 26, 2015, and Defendant's Response due September 11, 2015. Plaintiff did not file Objections.

Because no objections to the Magistrate Judge's Findings and Recommendation were filed, this Court is relieved of its obligation to review the record *de novo*. See *Dawson v. Marshall*, 561 F.3d 930, 932 (9<sup>th</sup> Cir. 2009). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*). Having reviewed the legal principles *de novo*, the Court modifies the Findings and Recommendation as follows:

As noted, the Magistrate Judge recommends the Court dismiss

this matter with prejudice for lack of subject-matter jurisdiction because Plaintiff has alleged both he and Defendant are residents of Oregon, and, therefore, they are not diverse. The Ninth Circuit, however, has held dismissals for lack of subject-matter jurisdiction due to nondiverse parties should be without prejudice. See, e.g., *Farren v. Option One Mortg. Corp.*, 467 F. App'x 692, 693 (9<sup>th</sup> Cir. 2012) (citing *Kelly v. Fleetwood Enters., Inc.*, 377 F.3d 1034, 1036, 1040 (9<sup>th</sup> Cir. 2004)); *Morgan v. Clark County Cred. Union*, 376 F. App'x 788, 789 (9<sup>th</sup> Cir. 2010).

Accordingly, the Court dismisses this matter without prejudice.

CONCLUSION

The Court **ADOPTS as modified** Magistrate Judge Acosta's Findings and Recommendation (#6). Accordingly, the Court **DISMISSES** this matter **without prejudice** for lack of subject-matter jurisdiction.

IT IS SO ORDERED.

DATED this 14<sup>th</sup> day of September, 2015.

  
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ANNA J. BROWN  
United States District Judge